required to suffer loss through the unauthorized and nefarious acts of agents.

WHEN THE SENDING OF A SUNDAY TELEGRAM IS A WORK OF NECESSITY.

In the recent case of *W. U. Tel. Co. v. Fulling,* 96 N. E. Rep., 967 (Ind.), the question was presented to the Court whether or not a telegraph message from a husband to his wife, telling her that late trains prevented him from returning home until the following morning, was a work of necessity within the exception of the statute prohibiting any work on Sunday, save that of charity or necessity. It was held that its tranquil effect on the mind of an anxious wife for the unexplained delay of her husband's arrival would be apparent to the ordinary mind; that this reason was of itself sufficient to prompt a considerate husband in sending the telegram; and that even if this was the only purpose for which it was sent that a necessity was shown which would bring it within the statutory exception.

The Massachusetts Court has said that any labor, business or work which is morally fit and proper to be done on the Lord's day, under the particular circumstances, is a work of necessity within the statute; and that it does not have to be a mere physical or absolute necessity to come within the definition. *Flagg v. Millbury,* 4 Cush., 243. And in a later case, *Doyle v. Lynn & B. R. R. Co.,* 118 Mass., 195, the same court says that the word "charity", used in the Snuday Law, which prohibits work and labor on Sunday, except work of necessity or charity, includes whatever proceeds from a sense of moral duty, or a feeling of kindness and humanity, and is intended wholly for the purpose of relief or comfort of another, and is not for one's own benefit or pleasure. In *Lawton v. Rivers,* 13 Amer. Rec., 741 (N. C.), the Court says that the word "necessity" is an elastic term; that it does not mean that which is indispensable, but still, on the other hand, that it does mean something more than that which is merely needful or desirable. And the Michigan Court lays down the rule that mere convenience of time or opportunity cannot be a test as to whether or not work done on Sunday is a work of necessity. *Allen v. Duffie,* 43 Mich., 1.

It seems to be well settled that the mere sending of a telegram is not of itself a work of necessity. And in Indiana it was held that there could be no recovery of the statutory penalty for failure to deliver a telegraphic message, where it was delivered to the company for transmission on Sunday, unless it is shown that there is a reasonable necessity for transmitting the message on that day. *Rogers v. W. U. Tel. Co.*, 78 Ind., 169. This doctrine was further affirmed in a later case which held that the transmittal of telegrams concerning ordinary business, or social affairs, cannot be regarded as a work of necessity. *W. U. Tel. Co. v. Yopst*, 118 Ind., 248.

The exact question involved in the principal case seems to have come up in no other jurisdiction except that of Missouri, and in that court it was held that where a telegraph company fails to deliver a message, in consequence of which it is sued for the statutory penalty, it is no defense that the message was delivered to the company for transmission on Sunday, when the sending of the telegram is an act of necessity or charity; that its transmission is such an act when it is sent by a husband to a wife for the purpose of explaining a protracted absence of the former from home, and to announce the time of his return. It was further laid down that the delivery of such a telegram for transmission on Sunday is not rendered illegal by the act that the sender could have sent it as well on the preceding Saturday, but failed to do so through inadvertence. *Burnett v. W. U. Tel Co.*, 39 Mo. App., 599.

In *W. U. Tel. Co. v. Wilson*, 93 Ala., 32, the Court holds that the notification to a person of the death of his father, involves such a necessity that the work of sending a telegram for that purpose is perfectly legal although done on Sunday. And in an Arkansas case, *Ark. & La. Ry. Co. v. Lee*, 79 Ark., 448, where a message sent by one brother to another, informing him of the death of their father, was not properly transmitted, and as a result the brother did not arrive in time for the burial of the father, it was held that the company was liable for the statutory penalty, regardless of the fact that the message was sent on Sunday.

In *Gulf C. & S. F. Ry. Co. v. Levy*, 59 Tex., 542, the company failed to deliver a telegraphic message which announced the death

of the sender's wife and child, and was directed to his father, requesting his presence and help. The court, holding the company liable, said that the sending of a telegram on Sunday to secure a decent burial for the dead, and to procure the presence of the parents of the deceased, is, in contemplation of the law, a work of necessity and charity, and therefore lawful. (Following *Doyle v. Flynn, supra.*)

In *W. U. Tel. Co. v. Griffin,* 1 Ind. App., 46, it was held that where a message was addressed to a doctor in another town, notifying him that the sender's daughter was ill, and asking him to come at once, it is sufficiently shown that there was a reasonable necessity for sending the message on Sunday. And the Mississippi court has even gone so far as to say that the sending of a telegram on Sunday which requests the presence of a lawyer in another city, whose services are urgently required in a criminal case, and whose work would be liberally remunerated, is to be considered an act of necessity; that the failure to deliver it was a breach of duty, and that the company was liable in damages for failing to transmit the message. *W. U. Tel. Co. v. McLaurin,* 70 Miss., 26.

In another Indiana case, *W. U. Tel. Co. v. Henley,* 23 Ind. App. 14, it was held that information given to a telegraph agent, to whom a telegram was delivered on Sunday—announcing the sender's arrival at a certain time over a certain railroad—that the sender's mother, who lived with the person to whom the message was directed, was on her death-bed, and that the sender was anxious to have it go at once, showed a reasonable necessity for the sending of the message on Sunday. But in *W. U. Tel. Co. v. Hutcheson,* 91 Ga., 252, the company was held not to be liable for the statutory penalty (for failure to deliver a telegram) where the message was sent on Sunday from a son to his mother, telling her that a friend would be with them for dinner, inasmuch as this was executing a work on Sunday, and unlawfully, as it did not come within the statutory exception of a work of necessity or charity.

From a review of these cases, and the reasons given for the decisions therein, it seems that the court was correct in reaching its conclusion in the principal case; for it is universally conceded

that there at least rests a strong moral necessity upon a husband of telegraphing an anxious wife as to an unexplained delay, when to do so would comfort her and relieve her mind of unnecessary worry and suffering.

IS A RESTRICTION IN A DEED FORBIDDING THE ERECTION OF A STABLE VIOLATED BY ERECTING A GARAGE?

It was recently held in *Riverbank et al. v. Bancroft, et al.*, 95 N. E. (Mass.), 216, that a restriction in a deed providing that "no stable of any kind, private or otherwise, shall be erected or maintained on the premises" is not violated by the building of a garage on the described premises. A clear understanding of the holding demands a somewhat detailed statement of the circumstances under which the deed was executed. In 1889 the plaintiff company acquired title to a tract of land adjacent to the city and laid it out in building lots. These lots were sold to diverse persons and all of the deeds of conveyance were of a standard form, containing a number of restrictions from which it is evident that this territory was laid out for a residential district. On this point the Court said, "It is apparent from the form of the deeds and from the facts shown, that the company intended that this territory situated upon the south bank of the Charles River, and at some distance from the business section, should be a fine residential district." Under these circumstances all the deeds, including the one involved in this case, were executed. About twenty years later the building of a garage on one of these lots prompted the plaintiffs to bring a bill for an injunction to restrain its erection.

The question before the Court was whether a "garage" was a "stable" within the meaning of the restriction forbidding the erection of a "stable of any kind." Owing to the fact that the garage is a product of recent years, the answer to this question cannot be had from a study of cases. Necessarily it must be obtained from the general principles underlying the construction of restrictive covenants in deeds. It is almost a maxim of real property law that the construction of covenants will be favorable to the grantee. A restriction will not be enlarged or extended by construction. *Glenn v. Davis*, 35 Md., 208; *Hawes v. Favor*,